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Appellants:	Loïc Grébonval et al.	Docket No.:	18,967
Serial No.:	10/722,805	Group:	3654
Confirmation No.:	8193	Examiner:	Nguyen, John Quoc
Filed:	November 26, 2003	Date:	November 6, 2006
For:	FREESTANDING DISPENSER FOR DISPENSING TWO DIFFERENT SUBSTRATES		

Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellants respectfully submit this Brief in support of their Appeal of Examiner Nguyen's Final Rejection of claims 1, 2, 5 - 27, which was mailed on June 9, 2006. On September 6, 2006, Appellants, pursuant to 37 C.F.R. 41.31, mailed a timely Notice of Appeal. Thus, the time period for filing this Brief ends on November 6, 2006.

Real Party in Interest

The real party in interest is Kimberly-Clark Worldwide, Inc. the assignee of record.

Related Appeals and Interferences

There are no prior or pending appeals, judicial proceedings or interferences known to the Appellant which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Claims 1 - 62 remain in the application, with claims 1, 2, and 5-27 being finally rejected. Claims 3, 4 and 28 - 62 are drawn to different species of the invention and have been withdrawn pending allowance of linking claim 1. The appealed claims include 1, 2, and 5-27 and appear in the CLAIMS APPENDIX of this Brief.

Status of Amendments

No amendments have been filed after receipt of Final Office Action.

Summary of Claimed Subject Matter

Referring to Figures 1-10 and the Summary of the Invention on page 2, several embodiments of a freestanding dispenser for dispensing two substrates such as paper towels and wet wipes from the freestanding dispenser is described and claimed. After a restriction election, the linking claims and the species claims drawn to the embodiment of the freestanding dispenser illustrated in Figures 1-4 are under appeal. The specification at pages 4-9 describes the embodiment illustrated in Figures 1-4.

Referring to linking claim 1, a freestanding dispenser 20 for dual dispensing of a wet substrate 24 and a dry substrate 24 comprising: a base 26 for supporting the freestanding dispenser on a substantially horizontal surface; a support member 27 connected to the base, the support member adapted for holding a roll 35 of a dry substrate in a substantially vertical position; wherein between approximately 50 percent to approximately 100 percent of the roll's exterior surface is exposed to provide ready access; and a source of a wet substrate 24 supported by the freestanding dispenser.

The base 26 includes a top 28, a bottom 30, and a sidewall 32. A spindle support member 34, a shroud support member 36, or both is attached to the top 28 of the base 26. The top 28 and the spindle support member 36 can be tilted to improve dispensing of the dry substrate. The base 26 can further include a spring open, dispensing door 54 operated by a button 58. The dispensing door 54 covers a dispensing opening 50 in the sidewall 32 for the wet substrate 24. The base 26 can also include a separate dispensing compartment 64 and a storage compartment 66. The compartments can be accessed by opening a refill cover 68 in the bottom 30.

In use for cleaning with the dry substrate, the roll is unwound and the substrate is torn or cut to the desired length for use. For cleaning with the wet substrate, the button is pushed to enable the dispensing door to spring open, and the wet substrate removed. If needed, the wet substrate is moistened to activate the surfactants or other chemicals applied to the wet substrate prior to use. Thus, the freestanding dispenser enables ready access to both substrates and provides convenient dispensing of both substrates from one integrated freestanding dispenser. Furthermore, the freestanding dispenser is compact, enabling placement on counters or other substantially horizontal surfaces without taking up too much space.

Grounds of Rejection To Be Reviewed on Appeal

1. Whether claims 1, 2, 5-19, and 22-26 stand properly rejected under 35 U.S.C. §103(a) as obvious over U.S. 6,899,250 issued to FitzSimons in view of U.S. 4,487,376 issued to Compton.

Argument**I. Claims 1, 2, 5-19, and 22-26 are not obvious with regard to U.S. 6,899,250 issued to FitzSimons in view of U.S. 4,487,376 issued to Compton**

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, or combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the Applicants' disclosure. See MPEP §2142 citing *In re Vaeck*, 947 f.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

FitzSimons, as seen in Figure 1, discloses a wet and dry towel dispenser 10 having an elongated container 12 with a slot 24 for accessing the dry towels 20 in the dry towel compartment 14. FitzSimons also includes an inner wall 30 forming a wet towel compartment 16 for housing the wet towels 22 that are dispensed through a removable cover 18 for the container 12. A cap 28 is provided to seal the wet towel compartment 16. FitzSimons specifically teaches that the dispenser 10 should be portable and should protect the dry towels from moisture and debris. For example, at column 1, lines 21 – 37, FitzSimons states:

Although the wet towels provide a cleaning and sanitizing capability not provided by dry towels, there is often a need to use dry towels together with wet towels. ... To satisfy this need, dispensers have been designed to hold and dispense both wet towels and dry towels. Examples of such dispensers are disclosed in greater detail in U.S. Pat. Nos. 6,189,730 and 5,803,249 and U.S. patent application Publication Nos. 20010019064 and 20010035416, which are incorporated herein by reference. The existing wet and dry towel dispensers, however, do not provide the wet and dry towels in a convenient package that can easily be packed or stored (e.g., in a diaper bag or in a drink holder of an automobile).

Accordingly, there is a need for a wet and dry towel dispenser in which the wet towels and dry towels are arranged more efficiently in a more convenient container. (emphasis added)

At column 4, lines 43 – 50, FitzSimons states:

Although various sizes and dimensions are contemplated, the dispenser 10 is preferably sized to be portable and easily stored. For example, the diameter of the container 12 can have the dimensions corresponding to a drink holder in an automobile. The coaxial arrangement of the dry towels 20 and the wet towels 22 within the elongate container 12 maximizes space and facilitates the portability of the dispenser 10. (emphasis added)

At column 3, lines 51 – 60, FitzSimons states:

The dry towel passage 24 is preferably a slot located along the outer wall 32 and in this embodiment, extending substantially the length of the container 12. In one embodiment, a lip or hood portion 36 extends from the outer wall 32 of the container over the dry towel passage 24 to prevent debris or moisture from contaminating the dry towels 20 (FIG. 1A). In another embodiment, a hinged cover (not shown) is closed over the dry towel passage 24 when it is not in use and is opened to access the dry towels 20.

When considering the teachings of the reference as a whole, it is clear that FitzSimons is concerned with portability and protecting the dry towels from damage during the portable usage. Furthermore, a slot for the dry towel passage as specified by FitzSimons is defined to be a *narrow opening*.¹

The Examiner has stated in Final Office Action dated 6/09/2006 rejecting the pending claims that:

It would have been obvious to a person having ordinary skill in the art to enlarge the opening 24/34 of Fitzsimons et al to expose up to 100% as taught by Compton to facilitate dispensing of the dry roll, the chosen amount, such as one between that shown by Fitzsimons et al (about 10%) and Compton (100%) which includes the claimed 50-100%, would have been an obvious matter of design choice to a person having ordinary skill in the art based on the factors such as preference and design criteria (such as desired exposed amount.)

A. No Motivation to Modify the Opening of FitzSimons as Suggested by the Examiner

Increasing the dispensing opening to such a large extent (50-100% as claimed) from the 10% disclosed by FitzSimons, as suggested by the Examiner, is clearly contrary to the teachings of FitzSimons. One of ordinary skill in the art would not be motivated to make the modification as suggested by the Examiner. Modifying the dry towel dispensing opening would render the dispenser 10 of FitzSimons unsuitable for its intended portable operation. The paper towel roll would be exposed to such a large extent that it would become damaged or dirty, preventing use of the dispenser in a portable application. FitzSimons teaches that in order to protect the paper towel roll for portable use, a narrow slot should be provided for use as the dry towel passage 24. Furthermore, FitzSimons at column 3, lines 51-60 teaches that to provide enhanced protection of the dry towels, the slot 24 can be provided with a lip or hood portion 36 to prevent debris or moisture from contaminating the dry towels. In another embodiment to prevent contamination, a hinged cover is closed over the dry towel compartment. Clearly, FitzSimons is concerned with protecting the dry towels and protecting them from debris, damage, or moisture contamination during portable use of the dispenser. One of ordinary

¹ The American Heritage College Dictionary Third Edition Copyright 2000 defines a slot to be a narrow opening, groove, or slit.

skill in the art reading FitzSimons would not be motivated to enlarge the dispensing opening from the existing 10% size to a range of 50-100% as suggested by the Examiner.

The Examiner has cited Compton for exposing 100 percent of the roll as old and well known in the art. Compton discloses a braking device for a paper towel roll to enhance dispensing in order to facilitate tearing a sheet by breaking the roll with the breaking device. While the majority of the roll's exterior surface is exposed in Compton, Compton does not teach or suggest having either more or less of the roll's exterior surface exposed to enhancing dispensing. Compton is silent with respect to how much of the roll's exterior surface should be exposed. Compton does not discuss exposing a significant portion of the roll's exterior surface to enhance dispensing. Compton does not provide the motivation to expose the specific range of the roll's exterior surface as claimed by the Applicants.

The Applicants' specification at page 4, lines 18-20, identifies exposing a specific percentage of the roll's exterior surface to enhance dispensing, for locating the tail, or to enable rewinding of the roll if an excess amount has been dispensed. There is no teaching or suggestion in Compton, FitzSimons, or the combination of the two to expose the claimed ranges for the purposes as taught by the Applicants. Thus, the Examiner's suggested modification does not come from the prior art, but instead the Applicants' disclosure has been used with hindsight as a blueprint to find the elements in the prior art.

B. Examiner's Suggested Modification Would Render FitzSimons Inoperable

The Examiner's suggested modification would render FitzSimons inoperable. For example, if the slot 24 is enlarged to expose 100% of the roll's exterior surface as suggested, there would no longer be an elongated container - i.e., there would no longer be any sidewall to the container, only a top and a bottom held together by nothing. As such, the container element of FitzSimons would be obviated by the proposed modification, rendering the FitzSimons dispenser inoperable. If the slot is enlarged significantly to expose 50% of the roll's exterior surface as suggested, the dry paper roll would fall out of the container in the embodiments shown in Figures 4 and 6 since there is insufficient structure to hold the roll inside of the container. With at least 50% of the roll's exterior surface exposed, the slot 24 would be at least as large as $\frac{1}{2}$ the circumference of the dry roll. As such, the dry roll would fall right out of the modified slot when the dispenser is placed into a diaper bag or used in portable automobile application. Furthermore, the roll could be pulled out of the slot during dispensing since the sidewall would no longer restrain the roll within the container, rendering the dispenser inoperable for its intended use. Lastly, exposing such a large amount of the surface area of the roll ensures that the roll becomes dirty or damaged during portable use, rendering the dispenser inoperable for its intended purpose.

C. Patentability of the Dependent Claims

Claim 6 recites that the base comprises a top 28, a bottom 30, a sidewall 32, and at least one opening 50; and a support member for holding the dry substrates that comprises a spindle 34 is attached to the top and a wet substrate located in the base. The combination of FitzSimons and Compton fails to disclose the recited elements. The spindle element 42 disclosed by FitzSimons in Figure 5 or Figure 7 is not attached to the top as claimed. The base 15 of Compton does not have a sidewall or a dispensing opening as claimed. The combination fails to teach or suggest all elements as claimed.

Claim 7 recites that the base comprises a top 28, a bottom 30, a sidewall 32, and at least one opening 50; and a support member for holding the dry substrate that comprises a shroud 36 and a wet substrate located in the base. The Examiner has stated that the container 12 of FitzSimons is the shroud. However, the Applicant's have claimed both a sidewall and a shroud as separate elements. The combination of FitzSimons and Compton at best only discloses one of these elements, arguably the sidewall, but does not disclose both as claimed.

Claim 8 recites both the spindle element and the shroud element to restrain the dry roll. The combination of FitzSimons and Compton fails to teach or suggest the combination of two elements to restrain the dry roll as claimed.

Claim 22 recites that the base comprises both a storage compartment 66 and a dispensing compartment 64. The combination of FitzSimons and Compton fails to teach or suggest both compartments as claimed. FitzSimons teaches only two dispensing compartments since each compartment in FitzSimons includes a dispensing opening to dispense the wet or dry towels. There is no separate storage compartment to store an extra unopened wet wipes pack as shown in Figure 2 and claimed in claim 22.

Claims 26 and 27 recite that the wet wipes are pre-packed into a separate package or that the package comprises a soft pack having a removable label. The combination of FitzSimons and Compton fails to teach or suggest a dispenser for pre-packaged wet wipes that are placed into the dispenser as claimed. The wet towels of FitzSimons are placed directly into the wet towel compartment 16. They are not separately packaged in a refill package as shown in Figure 2 and claimed.

D. Conclusion

For the reasons stated above it is Appellants' position that the Examiner's rejection of claims has been shown to be untenable and should be reversed by the Board. Please charge the \$500.00 fee

(fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

The undersigned may be reached at: (920) 721-7760

Respectfully submitted,

LOIC GREBONVAL ET AL.

By: Scott A. Baum

Scott A. Baum
Registration No.: 51,237

Claims Appendix

The claims on appeal are:

1. (Rejected) A freestanding dispenser for dual dispensing of a wet substrate and a dry substrate comprising:
a base for supporting the freestanding dispenser on a substantially horizontal surface;
a support member connected to the base, the support member adapted for holding a roll of a dry substrate in a substantially vertical position; wherein between approximately 50 percent to approximately 100 percent of the roll's exterior surface is exposed to provide ready access; and
a source of a wet substrate supported by the freestanding dispenser.
2. (Rejected) The freestanding dispenser of claim 1 wherein the source of the wet substrate is placed vertically either above or below the roll.
3. (Withdrawn) The freestanding dispenser of claim 2 wherein the wet substrate is housed in a separate container attached to the freestanding dispenser.
4. (Withdrawn) The freestanding dispenser of claim 3 wherein the container is attached to the freestanding dispenser adjacent the roll.
5. (Rejected) The freestanding dispenser of claim 1 wherein between approximately 75 percent to approximately 100 percent of the roll's exterior surface is exposed.
6. (Rejected) The freestanding dispenser of claim 1 wherein:
the base comprises a top, a bottom, a sidewall, and at least one opening;
the support member comprises a spindle attached to the top; and
the wet substrate is located inside of the base.
7. (Rejected) The freestanding dispenser of claim 1 wherein:
the base comprises a top, a bottom, a sidewall, and at least one opening;
the support member comprises a shroud; and
the wet substrate is located inside of the base.
8. (Rejected) The freestanding dispenser of claim 1 wherein:
the base comprises a top, a bottom, a sidewall, and at least one opening;
the support member comprises a spindle and a shroud; and

the wet substrate is located inside of the base.

9. (Rejected) The freestanding dispenser of claim 6 or 8 wherein the spindle is detachable from the top.
10. (Rejected) The freestanding dispenser of claim 6 or 8 wherein a diameter of the spindle is between about 5 mm to about 100 mm.
11. (Rejected) The freestanding dispenser of claim 6 or 8 wherein a length of the spindle is between about 10 mm to about 400 mm.
12. (Rejected) The freestanding dispenser of claim 6 or 8 wherein the spindle is attached at an angle A relative to a vertical axis between about 0 degrees to about 20 degrees.
13. (Rejected) The freestanding dispenser of claim 7 or 8 wherein the top is angled at an angle B relative to a vertical axis between about 70 degrees to about 90 degrees.
14. (Rejected) The freestanding dispenser of claim 7 or 8 wherein the top has a perimeter and the shroud is attached to the perimeter and extends along a portion of the perimeter.
15. (Rejected) The freestanding dispenser of claim 14 wherein the shroud comprises a gap.
16. (Rejected) The freestanding dispenser of claim 6 or 8 comprising a dispensing cover covering a dispensing opening located in the base.
17. (Rejected) The freestanding dispenser of claim 16 comprising a sealing ring surrounding the dispensing opening for sealing engagement when the dispensing cover is closed.
18. (Rejected) The freestanding dispenser of claim 17 wherein the dispensing cover springs open by force exerted from the cover compressing the sealing ring when closed.
19. (Rejected) The freestanding dispenser of claim 16 wherein the dispensing cover is pivotally attached to the base by a hinge.
20. (Rejected) The freestanding dispenser of claim 16 wherein the dispensing cover is opened by actuating a button.
21. (Rejected) The freestanding dispenser of claim 20 wherein the dispensing cover springs open when the button is actuated.
22. (Rejected) The freestanding dispenser of claim 6 or 8 wherein the base comprises a dispensing compartment and a storage compartment.
23. (Rejected) The freestanding dispenser of claim 6 or 8 comprising a dispensing opening in the sidewall and a refill opening in the bottom.

24. (Rejected) The freestanding dispenser of claim 23 comprising a dispensing cover and a refill cover.
25. (Rejected) The freestanding dispenser of claim 6, 7, or 8 wherein the dry substrate comprises a roll of paper towels.
26. (Rejected) The freestanding dispenser of claim 6, 7, or 8 wherein the wet substrate comprises a plurality of wet wipes contained in a package.
27. (Rejected) The freestanding dispenser of claim 26 wherein the package comprises a soft pack having a removable label for access to the wet wipes.
28. (Withdrawn) The freestanding dispenser of claim 1 comprising:
 - a separate container housing the wet substrate;
 - the container having a top, a bottom, and a sidewall;
 - the sidewall comprising a dispensing opening; and
 - the container having a bore through the top and the bottom for placing the container onto a spindle acting as the support member.
29. (Withdrawn) The freestanding dispenser of claim 28 wherein the container is vertically stacked above the roll.
30. (Withdrawn) The freestanding dispenser of claim 28 wherein the container is vertically stacked below the roll.
31. (Withdrawn) The freestanding dispenser of claim 28 wherein the top is removable for refilling the container.
32. (Withdrawn) The freestanding dispenser of claim 28 wherein the wet substrate comprises a wet roll.
33. (Withdrawn) The freestanding dispenser of claim 28 wherein the container comprises a dispensing cover for covering the dispensing opening.
34. (Withdrawn) The freestanding dispenser of claim 28 wherein the container comprises a sleeve inserted into the bore.
35. (Withdrawn) The freestanding dispenser of claim 28 wherein the sleeve extends past both the top and bottom.
36. (Withdrawn) The freestanding dispenser of claim 1 wherein:
 - the base comprises a top, a bottom, and a sidewall;

the support member comprises a hollow spindle attached to the top;
the wet substrate is located inside of the base; and
wherein the wet substrate is dispensed by threading the substrate through the hollow spindle.

37. (Withdrawn) The freestanding dispenser of claim 1 comprising:
 - a separate container housing the wet substrate;
 - the container having a top, a bottom, a sidewall, and a dispensing opening; and
 - a hanger member for attaching the container to the freestanding dispenser.
38. (Withdrawn) The freestanding dispenser of claim 37 wherein the bottom is arcuate.
39. (Withdrawn) The freestanding dispenser of claim 37 wherein the support member comprises a spindle, the hanger member comprises an extension member having a bore, the extension member is attached to the sidewall of the container at an angle of approximately 90 degrees, and the spindle is inserted into the bore.
40. (Withdrawn) The freestanding dispenser of claim 39 comprising a sleeve inserted into the bore and the spindle is inserted into the sleeve.
41. (Withdrawn) The freestanding dispenser of claim 39 comprising a dispensing cover for covering the dispensing opening and the dispensing opening is located in the top.
42. (Withdrawn) The freestanding dispenser of claim 37 wherein the support member comprises a spindle and the hanger member is attached to the spindle above the roll.
43. (Withdrawn) The free standing dispenser of claim 41 comprising a brace attaching the container to the base.
44. (Withdrawn) The freestanding dispenser of claim 37 wherein the support member comprises a spindle and the hanger member is attached to the spindle below the roll.
45. (Withdrawn) The freestanding dispenser of claim 1 comprising:
 - a substantially vertical spindle support member attached to the base;
 - a substantially vertical container spindle attached to the base;
 - a separate container housing the wet substrate, the container having a top, a bottom, a sidewall, and a dispensing opening; and
 - the container is attached to the container spindle.

46. (Withdrawn) The freestanding dispenser of claim 45 wherein the base comprises a platform and a plurality of legs.
47. (Withdrawn) The freestanding dispenser of claim 45 wherein the dispensing opening is located in the top.
48. (Withdrawn) The freestanding dispenser of claim 45 wherein the dispensing opening comprises a slot and is located in the sidewall.
49. (Withdrawn) The freestanding dispenser of claim 45 wherein a sleeve is attached to the sidewall and the container spindle is inserted into the sleeve.
50. (Withdrawn) The freestanding dispenser of claim 45 wherein the container comprises a bore through the top and the bottom and the container spindle is inserted into the bore.
51. (Withdrawn) The freestanding dispenser of claim 1 comprising:
 - a substantially vertical spindle support member attached to the base;
 - a separate container housing the wet substrate, the container having a top, a bottom, a sidewall, a dispensing opening, and a container spindle; and
 - the container is attached to the base by inserting the container spindle into a hole.
52. (Withdrawn) The freestanding dispenser of claim 1 comprising:
 - a substantially vertical spindle support member attached to the base;
 - a container housing the wet substrate, the container having a top, a bottom, a sidewall, and a dispensing opening; and
 - the container directly or indirectly attached spindle above the roll.
53. (Withdrawn) The freestanding dispenser of claim 52 wherein the bottom of the container comprises a bore for attachment to the spindle.
54. (Withdrawn) The freestanding dispenser of claim 52 comprising a dish attached to the spindle above the roll and the container placed in the dish.
55. (Withdrawn) The freestanding dispenser of claim 54 wherein the dispensing opening is located in the top.
56. (Withdrawn) The freestanding dispenser of claim 55 wherein the top is removable for refilling the container.
57. (Withdrawn) The freestanding dispenser of claim 55 comprising a dispensing cover for covering the dispensing opening.

58. (Withdrawn) The freestanding dispenser of claim 57 wherein the dispensing cover is opened by pressing a button.
59. (Withdrawn) The freestanding dispenser of claim 58 wherein the dispensing cover springs open.
60. (Withdrawn) The freestanding dispenser of claim 52 comprising a shroud attached to the base.
61. (Withdrawn) The freestanding dispenser of claim 54 comprising a shroud attached to the base.
62. (Withdrawn) The freestanding dispenser of claim 61 wherein the shroud extends from the base to the dish.

Evidence Appendix

No evidence to include in the brief.

Related Proceedings Appendix

There are no copies of related decisions to include.

CERTIFICATE OF TRANSMISSION

I, Lanette Burton, hereby certify that on November 6, 2006, this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

Typed or printed name of person signing this certificate:

Lanette Burton

Signature: Lanette Burton